defendant-appellant did not occupy the premises in the sense that he lived in them — he, in fact, carried on a business there under the style of Chop Hock Hin. Before the notice to quit was issued the defendant-appellant left the shop and a man named Heng Chor went to live there and began to carry on a business there. The sign "Chop Hock Hin" was removed and the sign of "Chop Sin Hin" was put up instead. The defendant-appellant declared that Heng Chor was his brother, that the business of Chop Sin Hin was his business, that Heng Chor was merely the manager and that Heng Chor was in occupation by virtue of being a member of his family. The learned Magistrate did not accept the evidence of the defendant-appellant and gave an order for possession.

Held, that (1) a brother is not a "member of his family" within the meaning of section 2 of the Control of Rent Ordinance; (2) the notice to quit was sufficient and good.

Obiter: The main purpose of the Control of Rent Ordinance is to protect tenants at a time when there is a shortage of dwelling and shop houses — it does not exist for the purpose of giving protection to those who by means of subtle devices, seek its protection.

CIVIL APPEAL.

P. Hall for the defendant-appellant.

C. S. Jayaswal for the plaintiff-respondent.

Cur. Adv. Vult.

Abbott, J. : — This is an appeal from a decision of the Magistrate sitting at Jasin. In the lower Court the plaintiff claimed possession of part of her premises which she had let to the defendant. The issue raised was as to whether or not the defendant or any member of his family was in occupation of the leased part within the meaning of section 13 (1) (i) of the Control of Rent Ordinance, No. 6 of 1948. It is common ground that the defendant did not occupy the premises in the sense that he lived in them — he, in fact, carried on a business there under the style of CHOP HOCK HIN. Before the notice to quit was issued the defendant left the shop and a man named Heng Chor went to live there and began to carry on a business there. The sign of CHOP HOCK HIN was removed and the sign of CHOP SIN HIN was put up instead. It was, and is, the case for the plaintiff that the defendant had abandoned the tenancy and remained no longer in occupation. The defendant, on the other hand, declared that Heng Chor was his brother, that the business of CHOP SIN HIN was his (the defendant's) business, that Heng Chor was merely the manager and that Heng Chor was in occupation by virtue of being a member of the defendant's family. The Magistrate found as a fact that the defendant was not, at the time of the notice to quit, in occupation of the premises and, by the implications of his finding, that the defendant had transferred the tenancy to another. The learned Magistrate gave an order for possession. Although the Magistrate's grounds of judgment are rather short and do not deal specifically with the point, it appears reasonable for this Court to hold that the lower Court did not accept the evidence that the new business belonged to the defendant — that the registration of the business name was effected after the notice to quit had been given in order to defeat the plaintiff's claim. As this Court sees it, the main purpose of the Ordinance is to protect tenants at a time when there is a shortage of dwelling and shop houses — it does not exist for the purpose of giving protection to those who by means of subtle devices, seek its protection. In any case the defendant's brother is not a "member of his family" within the meaning of section 2 of the Ordinance. Learned Counsel for the defendant raised the point that the notice to quit was out of order for want of precision as to the exact details of the tenancy. Whether this is so or not, it is perfectly clear (and could not have been otherwise to the defendant when he read it) that what the plaintiff wanted was vacant possession of all that part of the premises which had been in occupation of the defendant. This Court holds that the notice to quit is sufficient and, as such, good.

The appeal is dismissed, with costs.

Appeal dismissed.

K. KALIAMMAL v. R. G. MANICKAM.

[App. Civ. Juris. (Abbott, J.) July 2, 1952]

[Malacca — Civil Appeal No. 2 of 1952]

Limitation — Party relying upon the statute of limitations specifically to plead it.

There is an obligation imposed by the law of procedure in this country requiring the party relying upon the statute of limitations specifically to plead it, and failure to do so robs him of the value of the statute. It is no part of the duty of the Court to take notice of the statute of limitations unless it is specifically pleaded.

CIVIL APPEAL.

W. H. Sault for the appellant.

Respondent in person.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — This is an appeal from the President of the Sessions Court, Malacca. In the lower Court the plaintiff claimed from the defendant an amount due, as was alleged, in respect of wages payable by the defendant to him in respect of services rendered before the last war. The learned President gave judgment for the plaintiff and the defendant now appeals. The substantial ground of appeal is that

the plaintiff's claim was statute barred and that there had been no such acknowledgment in writing as would have given the defendant the protection of the statute of limitation. The defendant in the lower Court was unrepresented and she did not put in any statement of defence; she did not plead the statue of limitations. There is an obligation imposed by the law of procedure in this country and in England requiring the party relying upon the statute of limitations specifically to plead it. Failure to do so robs him of the value of the statute. It is no part of the duty of the Court to take notice of the statute of limitations unless it is specifically pleaded. It was not pleaded in this case and having regard to the evidence which I have read, I am not of the opinion that this is a case where I could properly exercise my powers of re-opening the matter with a view to varying the judgment of the learned President. In these circumstances the Appeal is dismissed.

Appeal dismissed.

GOVERNMENT OF THE FEDERATION OF MALAYA v. WONG HOI ONN.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Wilson, J.) July 4, 1952]

[Kuala Lumpur — Civil Appeal No. 18 of 1952]

Gaming — Betting and Sweepstakes Duties Ordinance, 1948, ss. 2(2), 3(1), 5 and 7 — Responsibility of promoter — Liability — Test applicable.

The Federal Government claimed $64,472.70 from the defendant, being the duty payable under the Betting and Sweepstakes Duties Ordinance, 1948, on five Sweepstakes conducted during 1950 by an association called the Selangor Health and Strength Association of which the defendant was the President. The learned trial Judge dismissed the claim on the grounds that, "No duty or tax can be charged upon an individual without express words. In this statute I can find no words apt to charge the duty on the privy purse of the promoter. In my opinion, therefore, the plaintiff Government have failed to establish that the defendant is personally indebted to them." The plaintiff Government appealed.

The Court of Appeal allowing the appeal, —

Held, that the responsibility of preparing the statement of accounts and of paying the duty is placed by the Ordinance on the promoter and if the promoter fails to deliver the statements or, with intent to evade the duty, draws up a statement which is false in any material particulars, he is liable to penalties. Under section 3(1) of the Ordinance "the promoter.... shall pay the amount of duty", and under section 6 "the duty required to be paid under the Ordinance shall be a debt due to the Federal Government".

Government of the Federation of Malaya v. Wong Hoi Onn p. 81 ante reversed.

Partington v. Attorney-General[1] applied.

Case referred to :—

(1) *Partington v. Attorney-General* (1869), L.R. 4 H.L. 100.

COURT OF APPEAL, appeal against the decision of Taylor, J., reported at p. 81 *ante*.

Cur. Adv. Vult.

The judgment of the Court was delivered by Mathew, C.J., (F.M.), with which Sir Charles Murray-Aynsley, C.J., (Singapore), and Wilson, J., concurred.

Mathew, C.J. : — The Federal Government is claiming $64,472.70 from the defendant, being the duty payable under the Betting and Sweepstakes Duties Ordinance, 1948, on five sweepstakes conducted during 1950 in the name of the Selangor Health and Strength Association.

The defendant was sued as the promoter of the sweepstakes, and the learned trial judge found on this question as follows :—

"On the evidence I find that at the material period all the affairs of the Association were managed by the defendant as a committee of one, the large clerical staff functioning under his orders and control. I therefore find that though he had the title of President and although there was a separate titular Secretary, the defendant was in fact either the Secretary of the Association (in addition to other duties) or a "similar official".

The learned trial judge dismissed the suit for the following reasons :—

"No duty or tax can be charged upon an individual without express words. In this Statute I can find no words apt to charge the duty on the privy purse of the promoter. In my opinion, therefore, the plaintiff Government have failed to establish that the defendant is personally indebted to them."

The learned trial judge concluded his reasoned judgment with the passage :—

"However that may be, I decide this case on the ground that in my view the duty is not explicity charged on the private purse of the promoter, and as this is the only cause of action pleaded, the Government cannot succeed on this plaintiff. The costs must follow the event."

It is convenient here to examine the relevant sections of the Betting and Sweepstakes Duties Ordinance, 1948. Section 2(2) provides :—

"On every sweepstake promoted by any club, association, or society on the result of a horse race or other race, whether such race takes place in, or outside, the Federation, there shall be charged a duty of twenty per centum of the amount contributed towards such sweepstake."

Section 1 reads :—

"The promoter shall draw up a statement of the amounts received as bets on each race and of the amounts contributed to each sweepstake and shall, as may by the Collector of Stamp Duties in each case be determined, either affix thereto adhesive stamps to the value of the duty chargeable under section 2 of this Ordinance or pay the amount of duty so chargeable in lawful currency of the Federation."